IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CIVIL APPLICATION NO.117 OF 2006

In

APPEAL FROM ORDER (STAMP) NO.2822 OF 2006

In

NOTICE OF MOTION NO.2324 OF 2005

In

SUIT NO.2789 OF 2000

Himanshu Chandrakant Mehta & Anr. : Applicants

V/s.

Voltas Ltd. & Ors. : Respondents

...

Mr.Mahabaleshwar for the applicants.

Mr.Manik Kalyaniwalla i/b. Mulla & Mulla & CBC for respondent no.1.

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CORAM : A.M. KHANWILKAR,J.

DATE : APRIL 19, 2006.

P.C.

1. Heard counsel for the applicants and respondent no.1. None appears for respondent nos.2 and 3, though served.

2. Counsel for respondent no.1 contends that the details provided in the application are absolutely vague. No

sufficient cause has been made out. There is substance in the arguments advanced by the learned counsel for respondent no.1. The delay as computed by the office is of 39 days. The only explanation that can be discerned from the application as filed from paras 3 and 4 is as follows:-

> "3. The Applicant states that the Impugned Order was passed on 28th October, 2005. Thereafter the Court was closed due to Diwali vacations. An application for a certified copy of the Impugned Order was made on 11/11/2005 which was issued on 21/12/2005. The present Appeal therefore was to be filed on 6/1/2006 therefore there is a delay of about 30 days in filing the same.
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> 4. The Applicants state that the applicant No.1 were not in the country and appropriate instructions could not be given in filing the same. The Applicants crave leave to refer and rely upon travel documents if required."

3. There is substance in the objection that no material facts are provided to substantiate the so-called sufficient cause stated in the application. Counsel for the applicants seeks time to file a better affidavit. He further submits that the applicants are willing to compensate respondent no.1 who is opposing this application by paying costs. As delay is of only 39 days, instead of deferring the hearing of this application, the same is allowed in terms of prayer clause (a) on condition that the applicants shall pay costs to respondent no.1 quantified at Rs.7,500/- to be paid within one week from today, failing which this application shall stand dismissed for non-prosecution without further reference to Court. If costs are paid in time to respondent no.1 and acknowledgement is produced, office to list the appeal for admission on 3.5.2006, on condition that the appellants shall remove all office objections in the said Appeal from Order on or before 28.4.2006.

A.M.KHANWILKAR, J.